



Self-Regulatory Organizations; LCH SA; Order Approving Proposed Rule Change Relating to the Restructuring Notification Process for Swaptions

May 12, 2022.

I. Introduction

On March 18, 2022, Banque Centrale de Compensation, which conducts business under the name LCH SA (“LCH SA”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its CDS Clearing Supplement (the “Clearing Supplement”) and certain CDS Clearing Procedures (the “Procedures”).³ The proposed rule change was published for comment in the Federal Register on March 30, 2022.⁴ The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

As detailed below, the amendments to the Clearing Supplement and the Procedures would (A) establish a new delegation requirement for Clearing Members in the case of a restructuring affecting an option to purchase Index CDS (an “Index Swaption”); (B) limit LCH’s liability to Clearing Members in light of this new requirement; (C) update certain provisions

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms used but not defined herein have the meanings specified in the Rule Book, Clearing Supplement, or Procedures, as applicable.

⁴ Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change to Relating to the Restructuring Notification Process for Swaptions, Exchange Act Release No. 94505 (March 24, 2022); 87 Fed. Reg. 18416 (March 30, 2022) (SR-LCH SA-2022-003) (“Notice”).

related to the exercise of Index Swaptions; (D) require Clearing Members and Clients consent to disclosure of their contact information in connection with the restructuring or exercise of Index Swaptions; and (E) correct typographical errors.

A. New Delegation Requirement

The proposed rule change would require that Clearing Members delegate to their Clients the authority to send and receive certain notices on their behalf. This new requirement would apply to a Client's cleared transaction in an Index Swaption where the underlying Index CDS is being restructured due to an event affecting one of its reference entities. Generally, this delegation requirement would mirror the delegation mechanism that currently applies to Clients in exercising their Index Swaptions.⁵

To establish this new requirement, the proposed rule change would amend Part C of the Clearing Supplement and Appendix VIII thereto. Part C sets out the terms applicable to a cleared Index Swaption transaction between a Clearing Member and LCH SA, while Appendix VIII sets out the terms applicable to the corresponding Index Swaption transaction between that Clearing Member and its Client. For example, the proposed rule change would add to Part C new defined terms, such as Restructuring Delegation Beneficiary (which would mean a Client designated by a Clearing Member to send and receive Credit Event Notices and Notices to Exercise Movement Option on its behalf). The proposed rule change similarly would revise existing defined terms, revise existing references to conform to new defined terms or changes in existing defined terms, and revise existing references to take into account the re-numbering of sections.

In addition to these revisions to defined terms and references, the proposed rule change would set out the delegation requirement in a new Section 5.7 of Part C. This new section would apply to Client Cleared Transactions in Index Swaptions that are being restructured, and it would

⁵ See Self-Regulatory Organizations; LCH SA; Order Approving Proposed Rule Change Relating to Implementation of Electronic Exercise Platform (Oct. 11, 2018), Exchange Act Release No. 84410 (Oct. 17, 2018) (SR-LCH SA-2018-004).

require Clearing Members designate their Clients to act on their behalf with respect to sending and receiving certain notices related to the restructuring. After a Clearing Member designates its Client, LCH SA would deem any delivery or receipt of a restructuring notice by the designated Client to constitute the delivery or receipt of a valid notice by the Clearing Member. LCH SA would treat any reference in the Clearing Supplement to a notice being delivered to or by a Clearing Member accordingly. This new section would generally mirror the provisions of current Section 6.4, which requires that Clearing Members designate their relevant Clients to act on their behalf with respect to exercising and abandoning Index Swaptions that are Client Cleared Transactions. A Clearing Member could withdraw the designation as long as there is no Swaption Restructuring Cleared Transaction registered in the Client Trade Account of the relevant Client.⁶

The proposed rule change would make similar amendments to the provisions found in Appendix VIII of Part C, which must be incorporated into an Index Swaption transaction between a Clearing Member and its Client (collectively, the “Mandatory Provisions”). For example, the proposed rule change would replace current Mandatory Provision 7 with a new provision that would require a Clearing Member to designate its Client in accordance with new Section 5.7 of Part C discussed above. New Mandatory Provision 7 also would require Clients to deliver Credit Event Notices or Notices to Exercise Movement Option directly to its counterparty, and would explain what would happen if the Client does not provide the notification within the required timeframe.

In addition to the changes to Part C and Appendix VIII of the Clearing Supplement, the proposed rule change would amend Section 5 of the Procedures to specify how Clearing Members would notify LCH SA of the delegation. The proposed rule change would do so by

⁶ The proposed rule change would make a similar change to Section 6.4, which specifies when a Clearing Member may withdraw a delegation related to exercise of Index Swaptions.

amending 5.19, which currently sets out the process for delegations related to exercise of Index Swaptions, so that it applies to delegations related to restructuring as well. Under amended Section 5.19, a Clearing Member must notify LCH SA of the delegation by sending a completed notification form, and a Clearing Member may withdraw the delegation only if no Swaption Restructuring Cleared Transaction is registered in the Client Trade Account of the relevant Restructuring Delegation Beneficiary.

B. Limitation of Liability

To complement the new delegation requirement, the proposed change would add new Section 13(c) to Part C of the Clearing Supplement. Under new Section 13(c), LCH SA would have no liability to a Clearing Member for any loss, cost or expense arising out of any failure of a Client to perform its obligations or in connection with the delivery of notices related to a restructuring. Section 13(c) would mirror existing Section 13(b), under which LCH SA has no liability to a Clearing Member for any loss, cost or expense arising out of any failure of a Client to perform its obligations in connection with a delegation of authority to exercise Index Swaptions.

C. Exercise Provisions

Unrelated to the new delegation requirement, the proposed rule change also would amend certain existing provisions found in Section 6 of Part C. Section 6 of Part C describes the process for exercising Index Swaptions and the sending and receiving of notices related to exercise. The purchaser of an Index Swaption exercises it through an Exercise Matched Pair, which consists of a buyer and seller paired by LCH SA. Section 6.1(a) requires that, upon the creation of an Exercise Matched Pair, LCH SA notify the buyer and seller, but it prohibits LCH SA from providing any detail with respect to their identities. The proposed rule change would delete this prohibition as duplicative in light of existing Section 6.1(b). That section dictates the circumstances in which LCH SA may provide the buyer and seller details about each other's identity. LCH SA may only do so through a Protected Exercise Matched Pair Report, and it may

only provide access to this report when there is a failure of LCH SA's electronic platform for exercising Index Swaptions. Finally, the proposed rule change would add at the end of 6.1 a new paragraph to state that a Clearing Member expressly consents to the disclosure of its information in accordance with this section through the Protected Exercise Matched Pair Report.

Section 6.5 describes the actions that LCH SA would take when there is a failure of LCH SA's electronic platform for exercising Index Swaptions. As mentioned above, where there is such a failure, LCH SA would provide access to the Protected Exercise Matched Pair Report. The proposed rule change would move from Section 6.1 to Section 6.5 language that requires LCH SA to provide contact information to Index Swaption buyers and sellers comprised within an Exercise Matched Pair. As a result of this change, where there is a failure of LCH SA's electronic platform for exercising Index Swaptions, LCH SA would provide each Clearing Member (or Client to whom the Clearing Member has delegated authority to exercise) with the other's address, fax number, telephone number, and contact email. LCH SA would provide this information in addition to providing access to the Protected Exercise Matched Pair Report. Finally, as part of this change, the proposed rule change would amend references to the Protected Exercise Matched Pair Report throughout Part C. LCH is making this change to accommodate differences in how it stores Clearing Members' and Clients' contact information as required by applicable law.

D. Consents to Disclosure of Contact Information

As part of the amendments to the Clearing Supplement, the proposed rule change also would add provisions that state expressly that Clearing Members and Clients consent to the disclosure of their contact information in connection with providing notices related to the restructuring of Index Swaptions and the exercise of Index Swaptions. These provisions would help to ensure that LCH SA is able to disclose this information under applicable law.

E. Correcting Typographical Errors

Finally, the proposed rule change would correct typographical errors in Part C of the Clearing Supplement and the Mandatory Provisions found in Appendix VIII.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.⁷ For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act⁸ and Rule 17Ad-22(e)(17) thereunder.⁹

A. Consistency with Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of LCH SA be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.¹⁰ Based on its review of the record, and for the reasons discussed below, the Commission believes the proposed changes to the Clearing Supplement and the Procedures are consistent with the promotion of the prompt and accurate clearance and settlement of transactions at LCH SA.

The Commission believes that the changes to implement the new delegation requirement, as discussed in Part II.A above, should promote the prompt and accurate clearance and settlement of Index Swaptions at LCH SA. Under the delegation requirement, a Client would send and receive notices related to a restructuring affecting one of its Index Swaptions directly, rather than relying on its Clearing Member. The Commission believes these changes therefore would reduce the operational burden on Clearing Members in clearing Index Swaptions for their

⁷ 15 U.S.C. 78s(b)(2)(C).

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 17 CFR 240.17Ad-22(e)(17).

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

Clients. The Commission believes reducing the operational burden on Clearing Members in clearing Index Swaptions for their Clients could in turn encourage more Clearing Members to offer such clearing service to their Clients, and therefore could promote the prompt and accurate clearance and settlement of Index Swaptions at LCH SA.

For similar reasons, the Commission believes that the changes discussed in Parts II.B and II.D above should promote the prompt and accurate clearance and settlement of Index Swaptions at LCH SA. The Commission believes that limiting LCH SA's liability in connection with the new delegation requirement should reduce the risk to LCH SA in relying on Clients to satisfy their obligations under the delegation. The Commission believes that doing so should enable LCH SA to implement the new delegation requirement. The Commission similarly believes that having Clearing Members and Clients consent to the disclosure of their contact information in connection with providing notices related to the restructuring of Index Swaptions should enable LCH SA to implement the new delegation requirement. The Commission believes such consent would enable LCH SA to disclose the contact information and that LCH SA may need to disclose such information in order for Clients to send notices related to a restructuring directly to other Clearing Members and Clients. The Commission therefore believes that both of these changes should facilitate LCH SA's ability to implement the new delegation requirement, which, for the reasons discussed above, the Commission believes should promote the prompt and accurate clearance and settlement of Index Swaptions transactions at LCH SA.

The Commission further believes that the changes related to the exercise of Index Swaptions, including having Clearing Members and Clients consent to the disclosure of their contact information in connection with exercise, as discussed in Parts II.C and II.D above, should promote the prompt and accurate clearance and settlement of Index Swaptions at LCH SA. The Commission believes that the changes described in Part II.C above would help to clarify the content of the Exercise Matched Pair Report and that having Clearing Members and Clients consent to the disclosure of their contact information, as described in Part II.D above, should

enable LCH SA to provide contact information, including through the Exercise Matched Pair Report. The Commission believes that where there is a failure of LCH SA's electronic platform for exercising Index Swaptions, Clearing Members and Clients could use the information in the Exercise Matched Pair Report, and the other contract information provided by LCH SA, to send notices related to exercise. The Commission therefore believes these changes should help to ensure that buyers of Index Swaptions are able to exercise their positions even where there is a failure of LCH SA's electronic exercise platform. The Commission believes that doing so should promote the prompt and accurate clearance and settlement of Index Swaptions at LCH SA.

Finally, the Commission believes that correcting typographical errors, as discussed in Part II.E above, should help to ensure the clarity and accuracy of the Clearing Supplement, and therefore should promote the prompt and accurate clearance and settlement of transactions using the Clearing Supplement.

Therefore, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.¹¹

B. Consistency with Rule 17Ad-22(e)(17)

Rule 17Ad-22(e)(17) requires that LCH SA establish, implement, maintain and enforce written policies and procedures reasonably designed to manage its operational risks by, among other things, ensuring that systems have a high degree of operational reliability.¹² The Commission believes that the new delegation requirement would increase the resiliency of the restructuring process for Index Swaptions. The Commission believes that making each Client responsible for sending and receiving notices related to exercise would delegate to Clients a responsibility that is currently concentrated in Clearing Members. Each Client would send and receive notices, rather than one Clearing Member bearing this responsibility for all of its Clients.

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

¹² 17 CFR 240.17Ad-22(e)(17).

As a result, the Commission believes this aspect of the proposed rule change should reduce the potential disruption that could result from a Clearing Member's operational failure, and therefore should increase the operational reliability of the restructuring process for Index Swaptions.

The Commission further believes that the changes discussed in Parts II.C and II.D above should enable LCH SA to provide contact information, including through the Exercise Matched Pair Report, where there is a failure of LCH SA's electronic exercise platform. The Commission therefore believes that these changes should help to ensure that buyers of Index Swaptions are able to exercise their positions even where there is a failure of LCH SA's electronic exercise platform, and accordingly, these aspects of the proposed rule should increase the operational reliability of the exercise process for Index Swaptions.

Therefore, the Commission finds that these aspects of the proposed rule change are consistent with Rule 17Ad-22(e)(17).¹³

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act¹⁴ and Rule 17Ad-22(e)(17) thereunder.¹⁵

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act¹⁶ that the proposed rule change (SR-LCH SA-2022-003) be, and hereby is, approved.¹⁷

¹³ 17 CFR 240.17Ad-22(e)(17).

¹⁴ 15 U.S.C. 78q-1(b)(3)(F).

¹⁵ 17 CFR 240.17Ad-22(e)(17).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,
Assistant Secretary.

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